

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 886 of 1995

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BHIKUBHAI SUKHABHAI PATEL POWER OF ATTORNEY HOLDER OF
MOHANBHAI GOPALBHAI PATEL
VERSUS
RAMBHAI KANJIBHAI PATEL

Appearance:

MR ZF BHARDA for the Petitioner
MR SUNIL K PATEL for Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 09/02/2000

C.A.V. JUDGMENT

1. The facts of the case, in brief, are that the

original plaintiff - respondent filed the suit in the court of Civil Judge, (S.D.) Navsari against one Bhikhiben who expired during the pendency of the suit. Mohanbhai Gopalbhai Patel claims interest in the suit property on the basis of gift deed and applied for his impleadment as heir and legal representative of deceased Bhikhiben in the suit. This application came to be rejected by the learned trial court under the impugned order. Hence, this revision application.

2. Learned counsel for the petitioner submits that the registered gift deed is there in favour of Mohanbhai Gopalbhai Patel of Bhikhiben. The respondent plaintiff has got interim injunction in the suit. On the basis of that suit, what he is trying is to get the property in dispute through the aid of Sarpanch of the Gram Panchayat. It is lastly submitted that the right to sue survives to the person named aforesaid after death of Bhikhiben and he should have been brought on the record as heir and legal representative of deceased.

3. The counsel for the plaintiff- respondent submits that the petitioner can not be brought on record as heir and legal representative of deceased Bhikhiben. On being asked by the court, the counsel for the plaintiff - respondent admits that after the death of Bhikhiben, for want of bringing on record her heirs and legal representatives, the suit abates in toto. The plaintiff -respondent being the plaintiff in the suit, on death of Bhikhiben if he wants to continue the suit, should have brought her heirs and legal representatives on record, which has not been done and that has also been admitted by the counsel for the plaintiff respondent.

4. As a result of which, the suit out of which this revision application has arisen abates and the same deserves to be dismissed as having abated. On dismissal of the suit as having been abated naturally whatever interim relief or temporary injunction in the suit below Ex.5 also stands vacated. It is made clear that the suit of the plaintiff respondent has been dismissed and the Sarpanch, Gram Panchayat concerned or any other officer will not take any action in the matter for calling objection for transfer of the suit property in the name of plaintiff respondent. The right which the plaintiff respondent claims in the property in dispute now no more is there as the suit has been dismissed and he can not have any right in the property.

5. As the suit itself has been dismissed as having

been abated, this revision application has become infructuous and the same is dismissed. The dismissal of the revision application will not have any effect on the right, title and interest of Mohanbhai Gopalbhai Patel in the suit property on the basis of registered gift deed of Bhikhiben. Learned trial court is directed to draw the decree of the dismissal of the suit as having abated accordingly. Rule is discharged.

zgs/-